Supreme Court of the United States

DAVID P. LAWRENCE,

FERRO

BRIEF OF

George D. [illegible]
Of Counsel.

INDEX.

Subject Index.

	Pages
Argument	1- 7
There are no grounds for the granting of a writ of certiorari in this case	1

Table Of Cases, Text Books and Authorities Cited.

Hamilton-Brown Shoe Company v. Wolf (1915), 240 U. S. 251, 258, 60 L. Ed. 629, 633	3
Magnum Import Company v. Coty (1922), 262 U. S. 159, 163, 67 L. Ed. 922, 924	3, 7
Page v. Arkansas Natural Gas Corporation (1932), 286 U. S. 269, 76 L. Ed. 1096	6
Positype Corporation v. Mahin (1929; C. C. A. 2d), 32 Fed. (2d) 202, 204	5
XX American Bar Association Journal, No. 6, page 341	2
United States Supreme Court Rule 38 (5)	2

In The

Supreme Court of the United States

October Term, 1941.

No. 858.

DAVID P. LAVIETES,

Petitioner (Plaintiff-Appellant),

v.

FERRO STAMPING AND MANUFACTURING COMPANY, a Michigan Corporation; JOHN H. ROETHEL, WILLIAM C. DEVEREAUX, ELMER J. GRAY, ACKERMAN, BLAESER & FEZZEY, INC., a Michigan Corporation; TERNSTEDT MANUFACTURING COMPANY, a Michigan Corporation; AUTOMOBILE VENTILATION, INC., a Michigan Corporation; and DETROIT HARVESTER COMPANY, a Michigan Corporation,

Respondents (Defendants-Appellees).

BRIEF OF RESPONDENTS FERRO STAMPING AND MANUFACTURING COMPANY, JOHN H. ROETHEL, WILLIAM C. DEVEREAUX, ELMER J. GRAY, ACKERMAN, BLAESER & FEZZEY, INC., AND AUTOMOBILE VENTILATION, INC., IN REPLY TO PETITIONER'S BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

ARGUMENT.

There Are No Grounds For the Granting Of a Writ Of Certiorari In This Case.

According to the petition for writ of certiorari and supporting brief, this is an action in equity to construe two

contracts as one instrument. The only question before this Honorable Court is whether or not a writ of certiorari should be granted in order that this court may review the decisions of the District Court and the Circuit Court of Appeals in construing such contracts as separate agreements.

Obviously this is not a case in which certiorari will lie. The situation is not one in which there is a conflict in the construction of like or similar contracts by two Circuit Courts of Appeals, nor one which presents other special or important grounds of the character indicated by Rule 38 (5). As the case merely involves the construction of ordinary agreements, certiorari should be denied. We quote from the address of Mr. Chief Justice Hughes at the American Law Institute meeting, as reported in *XX American Bar Association Journal, No. 6, page 341:*

> "But we find that a very large proportion of the applications (for writs of certiorari) are without substantial grounds. Yet the papers submitted must be examined, although on examination the futility of the application is disclosed. *For example, we have many applications where the questions raised are those relating to particular contracts or transactions and turn upon the facts of the particular case, and there is no controversy of importance with respect to legal principles.* Applications are numerous in which there appears to be no conflict of decision between the Circuit Courts of Appeals, or between Federal and State courts in cases where the latter should be controlling, and no real conflict with the decisions of the Supreme Court, and there is an utter absence of any good reason for asking our review. That review, we must emphasize, is in the interest of the law, not in the interest of particular parties. It is not the importance of the parties or the amount involved that is controlling, but the need of securing harmony of

> decision and the appropriate settlement of questions of general importance so that the system of federal justice may be appropriately administered." (Italics ours.)

In *Magnum Import Company v. Coty (1922), 262 U. S. 159, 163, 67 L. Ed. 922, 924,* Mr. Chief Justice Taft makes the following statement:

> "The jurisdiction to bring up cases by certiorari from the circuit courts of appeals was given for two purposes: First, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. *The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing.* Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ." (Italics ours.)

In *Hamilton-Brown Shoe Company v. Wolf (1915), 240 U. S. 251, 258, 60 L. Ed. 629, 633,* Mr. Justice Pitney, in reference to writs of certiorari, stated:

> "As has been many times declared, this is a jurisdiction to be exercised sparingly, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision."

Petitioner, however, sets forth two grounds upon which he claims a writ of certiorari should be allowed, both grounds being entirely inapplicable. It is petitioner's claim: (1) that the Lower Court has decided an important question of local law in a way in conflict with the applicable local decisions; (2) That the Lower Court

has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

As to the second ground, we have examined the petition for writ of certiorari and supporting brief and are satisfied that petitioner has completely eliminated from his petition and brief any discussion of his claim that there was a departure from the accepted and usual course of judicial proceedings. It suffices to say that the record itself shows no such departure.

Petitioner's argument, which is devoted entirely to the first ground, sets forth fundamental rules of law which no court would deny, namely; that the intention of the parties governs the interpretation of contracts, that admissions of parties are admissible against them in evidence, and that pleadings may be amended. These rules of law have never been disputed by the District Court nor the Circuit Court of Appeals in this case, nor by counsel.

The only portion of the argument which we need discuss at all is that relating to the intention of the parties, the other points not being embodied in the assignments of error (R. 124-131) and not being related to the question of the construction of the contracts. Petitioner is asking that Exhibit 158 (R. 1188A-1188C; 283) and Exhibit 159 (R. 1188D; 292) be construed as one contract and that he may be permitted to share equally in the royalties given to defendant Roethel under Exhibit 159, in spite of the fact that petitioner was not a party to Exhibit 159, but only to Exhibit 158. Petitioner discusses a number of cases involving agreements entirely different from Exhibits 158 and 159. In regard to Exhibits 158 and 159,

the two agreements are not between the same parties and do not cover the same subject matter. Exhibit 158 relates only to patents and patent applications pending prior to September 6, 1930. Exhibit 159 has to do only with inventions and improvements developed by Roethel subsequent to September 6, 1930, while he was in the employ of defendant Ferro Stamping and Manufacturing Company (R. 1188A-1188D).

It is well settled that contracts are read as one only where the parties and the subject matter are the same. In *Positype Corporation v. Mahin (1929; C. C. A. 2d), 32 Fed. (2d) 202, 204,* the court said:

> "Several instruments between the same parties, executed at the same time, and dealing with the same subject matter, are read as one; but the absence of one or more of such elements of identity may make clear that the instruments are independent of each other. For instance, where the parties to the instrument are different, they do not constitute one agreement *(Pittsburgh, C. & St. L. R. Company v. Keokuk & H. Bridge Company, 131 U. S. 371, 9 S. Ct. 770, 33 L. Ed. 157; Pittsburgh, C. & St. L. R. Company v. Keokuk & H. Bridge Company, 155 U. S. 156, 15 S. Ct. 42, 39 L. Ed. 106),* * * * or where the subject matter is different *(Bailey v. Ry. Company, 17 Wall. (84 U. S.) 96, 21 L. Ed. 611; Lillard v. Ky. Distilleries & Warehouse Company (C. C. A.), 134 F. 168).*"

The Trial Court found that the contracts meant exactly what they said, were unambiguous and that Lavietes acquired no interest under Exhibit 159 (111). In other words, the court did determine what the intention of the parties was and interpreted the contract accordingly. Petitioner's petition for a writ of certiorari is actually

based upon his disagreement with the facts of the case relative to the intention of the parties as found by the Trial Court and concurred in by the Circuit Court of Appeals. In *Page v. Arkansas Natural Gas Corporation (1932), 286 U. S. 269, 76 L. Ed. 1096,* and numerous other cases, this Honorable Court has held that it will not review findings of fact in which both courts below concur.

In view of petitioner's claim that the suit is one to construe two contracts as one instrument, we believe the court will agree that petitioner is not claiming certiorari as against the defendants who were not parties to such contracts. The defendants who were not parties to such contracts were joined in this action because of petitioner's claim that the defendants fraudulently conspired to deprive petitioner of his interest under an alleged oral contract with defendant Roethel. Petitioner abandoned this claim on the appeal, the Lower Court having found that under the facts there was no evidence of fraud, no evidence of a conspiracy and no oral contract.

All litigation must come to an end. This case has been thoroughly argued in the District Court and before the Circuit Court of Appeals. In the Circuit Court of Appeals Petitioner filed a voluminous brief with a separately bound appendix, a supplementary brief, reply briefs, a motion for rehearing and a motion for oral argument on the motion for rehearing. He now asks this court to review the decisions of the District Court and the Circuit Court of Appeals on the sole question of whether such courts were correct in holding that separate instruments, having different parties and different subject matter, were not to be construed as a single contract so as to permit a party to one of the instruments to share in the benefits under both. There is no question of any conflict

existing between the decisions of two Circuit Courts of Appeals. It is obvious that no important question of local law has been decided by the Lower Court to any extent in conflict with any applicable local decisions. We again quote an excerpt from the previously quoted remarks of Mr. Chief Justice Taft, in *Magnum Import Company v. Coty, supra,* in reference to the United States Supreme Court granting a writ of certiorari:

> "The jurisdiction was not conferred upon this court merely to give the defeated party in the Circuit Court of Appeals another hearing."

We respectfully urge that the petition for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

Grant L. Cook,
Attorney for Respondents,
Ferro Stamping and Manufacturing Company, John H. Roethel, William C. Devereaux, Elmer J. Gray, Ackerman, Blaeser & Fezzey, Inc., Automobile Ventilation, Inc.

George D. Hatie,
Of Counsel.

Dated February 28, 1942.